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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,782	07/05/2001	Dieter Stimberg	STIRNBERG ET	8752
25889	7590	10/27/2003	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			WACHSMAN, HAL D	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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09/869782

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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13

DATE MAILED:

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Commissioner for Patents

Hal D Wachsman
Primary Examiner
Art Unit: 2857

Office Action Summary

Application No.

09/869,782

Applicant(s)

STIRNBERG ET AL.

Examiner

Hal D Wachsman

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 87-108 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 87-108 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

1. The replacement sheet drawings filed 8-13-03 are objected to for the following reasons:

a) The sheet numbering on sheets 2-10 are incorrect because the sheet numbering indicates that there is a total of 10 sheets, such as for example at the top of the second sheet of drawings where it states "2/10" however there is actually a total of 11 sheets of drawings. Appropriate correction is required.

b) There is only one "Prior art" label on the third sheet of drawings for Figures 3a and 3b, however each of these figures needs its own prior art label. This same type of problem also occurs on sheet 10 of the drawings with respect to Figures 10a and 10b. Appropriate correction is required.

2. The "CROSS REFERENCE TO RELATED APPLICATIONS" on page 1 of the specification has now been changed so that the Applicants are claiming priority under 35 U.S.C. 365 of PCT/DE00/00067 filed January 4, 2000. However, MPEP 1893.03(c), "PRIORITY CLAIM UNDER 35 U.S.C. 119(e), OR 120 AND 365(c), page 1800-156, notes that a national stage application submitted under 35 U.S.C. 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. Stated differently, since the international application is not an earlier application (it has the same filing date as the national stage, a benefit claim in the national stage to the international application is inappropriate. Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the

application by the international authorities prior to commencement of the national stage.

Appropriate correction is required.

3. As was already noted in paragraph 5 of the previous Office Action, the Abstract contains legal phraseology (i.e. "said methods) in lines 11 and 12-13 of the Abstract as well as purported merits "(i.e. "... devices which are useful for"). Appropriate correction is required.

4. The German Office Action No. 199 00 129.4-52 dated Sept. 13, 1999 and cited on the IDS filed 8-13-03 was not considered because this action in itself is not a prior art reference.

5. The Examiner respectfully notes that claim 105, in lines 5 and 7, have reference numerals that were not deleted. Also in the substitute specification, page 30, next to last line, cites "photometri" (should be photometric) and page 32, line 6, cites "In figure I..." (there is a capital I being used instead of the number 1).

6. Page 39 of the substitute specification is objected to under 37 C.F.R. 1.52 because several of the subscripts in the equations are extremely small in size and difficult to clearly read. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 87-108 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 87, lines 22-23, cite "a standard – arithmetic procedure" which is vague as to exactly what type of procedure is being referred to here. Claim 88 refers to an industry standard procedure AGA8-92DC which is indefinite since the organizations implementing standards meet regularly and have the authority to modify standards, any connection a claim may have to these standards may have varying scope over time. In addition, if the standard changes, then the disclosure may no longer support the limitation. This same type of problem also occurs in claims 89 and 94. Claim 92, line 3, cites "the infrared active components" which lacks clear antecedent basis. Claim 98, lines 17-18, cite "the radiation receiver" however the antecedent basis is "at least one radiation receiver". As a result of the last amendment to claim 108, lines 2-4 of this claim now cite "...wherein the probe cell is sweepable with an infrared inactive gas, **preferably** for carrying out a null measurement.." which is still indefinite because it is not clear if the range of the probe cell being swept with an infrared inactive gas is just limited to carrying out a null measurement as described in the claim or if the probe cell is being swept with the infrared inactive gas for other reasons too.

9. Applicant's arguments filed 8-13-03 have been fully considered but they are not persuasive with respect to the 35 U.S.C. 112 2nd rejections that remain above. The Examiner respectfully notes for example, with respect to the industry standards being employed in the claims that correction was not made and no arguments were presented in the Remarks section of the reply. In addition, as shown above, there are several other

types of 35 U.S.C. 112 2nd problems that were cited in the previous Office Action that were not corrected in the reply filed 8-13-03.

10. No claims are allowed.

11. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D Wachsman whose telephone number is 703-305-9788. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.


Hal D Wachsmen
Primary Examiner
Art Unit 2857

HW
October 24, 2003